BEFORE THE TENNESSEE DEPARTMENT OF EDUCATION

IN RE:	)	
	)	
J.M.B.	)	
	)	
	)	
v.	)	NO. 98-14
	)	
	)	
	)	
Washington County Board of Education	)	

FINAL ORDER

THIS cause came to be heard on the 21st day of April, 1998, in Jonesborough, Tennessee, before the Honorable Linda G. Welch, Administrative Law Judge for the State of Tennessee, Department of Education, Special Education Division, with Pat Hull, acting counsel for the school system, and Keith Martin, advocate for the child, in attendance pursuant to a request for Due Process Hearing filed by the parent. A subsequent hearing was held on the 18th day of August, 1998, in Jonesborough, Tennessee, pursuant to a request to introduce new evidence filed by the Petitioner.

The issue initially presented by the Petitioner in the cause was whether or not this child was receiving a free appropriate public education according to his needs and medical condition. A program was proposed by the parent which initially required the child receive all educational activities in the home, mandated implementation of specific methodology, and

required that it be instituted and managed by Dr. Dennis Mozingo, a psychologist located in Tallahassee, Florida, who is a certified behavioral analyst. (Tr. 37:13-25)

PROCEDURE

1. Pre-Hearing telephone conference call was held on March 31, 1998. An Order was issued on April 2, 1998, outlining a schedule for the parties and setting the Due Process hearing for April 21, 1998.

2. A Due Process hearing was held on April 21, 1998.

3. A Post-Hearing telephone conference call was held on April 30, 1998, to consider a request by the mother for an extension of time within which to file a post-hearing brief. This request was granted. An Order was issued that day granting the mother until June 1, 1998, to file her brief, and June 9 for the school system to file a response.

4. Also on April 30, 1998, the school system filed a Post Hearing Memorandum on behalf of the Washington County School System.

5. The mother, Ms. B., through her paralegal/parent advocate, filed a Post Hearing Brief on May 27, 1998.

6. June 2, 1998: Motion to Strike Evidence submitted after Hearing, and for sanctions filed by the Respondent, Washington County.

7. June 6, 1998: a revised Post Hearing Brief on behalf of the child was filed by Mr. Martin, paralegal/parent advocate.

8. Also on June 6, 1998: Motions were filed by Mr. Martin 1) to disallow further response by the school system and, 2) to continue the Due Process hearing, citing new evidence and requesting that this new evidence be admitted and testimony allowed on it.

9. Following a telephone conference, a Post-Hearing Order was issued on June 8, 1998, granting the school system's Motion to Strike Evidence and giving the Petitioner until June 10 to redact the evidence from his brief (filed on June 6) and giving the school system until June 17 to file a response.

10. June 9, 1998: Response of Washington County to the Post-Trial Motions filed on behalf of the child and parent. The school system opposes re-convening a hearing in this matter and opposes the admission of new evidence.

11. June 16, 1998: reply brief of the school system filed.

12. Following consideration of the briefs, an Order was issued on July 7, 1998, granting a continuance in the Due Process hearing until a date to be set by conference call.

13. A Scheduling Order was issued following a telephone conference call on July 10, 1998, setting the Due Process hearing on August 18, 1998.

14. On August 12, 1998, Petitioner, filed a Pre-Hearing brief in support of their claims.

15. Also on August 12, 1998, Respondent school system filed a brief relative to the re-opened hearing.

16. August 14, 1998: Motion to Suppress Exhibit filed by Petitioner, asking that Respondent's audio tape recording of the IEP meeting of August 10 be suppressed.

17. August 14, 1998: Motion by Respondent school system to arrange a telephone conference call which would ascertain what proof will be allowed for the parties in this matter.

18. August 18, 1998: Due Process hearing held at Jonesborough, TN. Interim Order issued at the hearing concerning the child's attendance at school. Written Order confirming the oral directions given at the hearing was issued August 24, 1998.

19. August 25, 1998: Respondent's Response to Petitioner's Motion to Suppress use of the audio tape filed. Matter was discussed at the August 18 hearing and the school system was allowed to use the tape.

20. September 3, 1998: Motion filed by Respondent school system requesting "appropriate action" by the Judge to make sure that J.M.B. is in school and his mother is not verbally abusive to school personnel.

21. Sept. 8, 1998: Letter sent to ALJ from Mr. Martin stating that the child has been withdrawn from school on advice of therapist to continue schooling at home until a final determination can be made.

22. September 8, 1998: Petitioner's Motion for Sanctions against the school system filed, alleging violations by the school system of the July 16 Order (sic) requiring that copies of expert reports be sent to the parent advocate, and the August 24 Order, under which the advocate alleges three violations of procedure.

23. September 8, 1998: response by Petitioner to school system's Motion filed Sept. 3 & Sept. 8.

24. September 8, 1998: Motion by school system to conduct a conference call and intervene, to return the child to school and to limit further direct contact between the mother and school officials.

25. September 9, 1998: Telephone conference call with subsequent Second Interim Order issued Sept. 16, 1998. Order regarding the immediate return of the child to school and mother's actions issued.

26. September 16, 1998: Post-hearing brief filed by Petitioner, Ms. B.

27. September 18, 1998: Motion filing with the Court classroom notes by Mr. Musick plus a Memorandum of Law on behalf of the school system subsequent to the re-opened hearing.

28. September 24, 1998: Petitioner's response to the school system's submission of Mr. Musick's notes on Sept. 18.

29. September 24, 1998: Petitioner's Motion to Strike Exhibit "A" (a letter by Dr. Allen) and to Strike Parts of Brief "due to improper procedure and defamatory and prejudicial statements."

FACTS/TESTIMONY

The case concerns a seven year old child with a diagnosis of moderate autism. (Ex. 38, p.152). The child has been involved with the Washington County School System for

several years with documented improvement. Initially the child was placed in the Washington County School System for the 1993-94 school year, which experience his mother characterized as "positive". (Tr. 50:11-16). An IEP-Team meeting was held on May 29, 1996, in which the entire team, including the parents, agreed that the child should attend Boone's Creek School in a self-contained classroom. Following this meeting the parents changed their minds with regard to the placement and requested another IEP-Team meeting. (Tr. 55: 13-24). The mother had decided she did not want the child in CDC classes because she felt he did not belong in a class of children with severe behavioral problems and he was not oppositional in most instances. (Tr. 22-23). The placement was changed without difficulty and the student was sent to the kindergarten program at Sulphur Springs School where he had the services of a full time female teaching assistant who had a degree in Early Childhood Special Education. (Tr. 166:1-7, 165:16-25). The child adapted well to kindergarten and made the transition more quickly than expected. He participated fully in the program. (Tr. 168: 7-15). He had appropriate interaction with his peers. (Tr. 169:4-10). The mother asked for and received a specific teacher for the 96-97 school year. (Tr. 26:16-21 & 27:1-6). The child subsequently attended first grade at Sulphur Springs where he continued to have the same full time teaching assistant for part of the school year. At the beginning of the 97-98 school year (first grade) the child had a few days of tantruming; however, the mother expected this behavior. (Tr. 62: 14-22). She was aware that it was typical for autistic children to have problems transitioning through any changes. (Tr. 63:3-6). The child did well thereafter until around Thanksgiving of that year when he started having

tantrums when he had visits with his father and paternal grandparents. (Tr. 63:19-25, 64:1-25). Because of the tantruming episodes, which occurred when the child first came to school, the school staff made arrangements for two male staff members to take the child from the car and assist or carry him into the school. (Tr. 65:7-11). He continued to have some behavior problems upon arriving at school for a few months. However, there was a change in the teaching assistant in March of 1998 in that the female teaching assistant left and was subsequently replaced by a full time male teaching assistant, Mr. Lynn Musick, whose education consisted of a Master's Degree in Education and a proposed completion of his certification in Special Education within that year. Prior to the selection of this second teaching assistant the parent requested that the child have a male teaching assistant. (Tr. 175:1-14). The school system subsequently searched for and found a male teaching assistant for this child, who by all accounts, including the mother's, helped the child in many ways, but specifically in controlling behavior that was a manifestation of the child's handicapping condition which was interfering with his ability to learn. (Tr. 45:2-8). This male teaching assistant was dispatched in a van and actually picked the child up at his home for school. (Tr. 65:12-18). The child significantly improved with this assistant. (Tr. 65:16-25, 66:1-10). During the child's attendance at school, his language improved, he became more independent with self help skills, became interested in cooking, which required he be able to read, comprehend and mix ingredients and he was initiating contact with others at school. (Tr. 59:4-12, 60:13-25, 61:1-7, 61:8-19). Further, outside of the classroom in 1998, he was initiating appropriate responses to others. (Tr. 61:24-25, 62:1-9).

When the child went to kindergarten, the school system, in cooperation with and at the suggestion of the parent, secured materials and training for the staff concerning autistic children from the TEACCH program in Asheville, North Carolina. (Tr. 176:22-25, 177:1-8). Several staff members were sent for specific training, which included the child's kindergarten teacher, the proposed first grade teacher, the child's full time teaching assistant and the guidance counselor. (Tr. 27:12-19, 177:8-23, 178:4-6). The TEACCH program is a behavioral program used for autistic children. Dr. Susan Belcher, the Assistant Superintendent of Special Programs for Washington County arranged for Dr. Maureen Conroy, who was with the staff of East Tennessee State University Special Education Department, who was known for her work with autism and behavioral disorder, to work with the school staff concerning this child according to Mrs. Belcher. (Tr. 166:20-25, 167:1-9). The kindergarten year went exceptionally well for this child (Tr. 168:6-15).

At the beginning of the following year (first grade) the child had approximately four "tough" days according to his mother (Tr. 68:15), but thereafter things went well for several months. (Tr. 63:16-18). The child began to exhibit specific behavioral problems that began around Thanksgiving of 1997, which were manifested by the child having "tantrums" to the extent that getting the child to school became a problem. (Tr. 63:19-21). It was determined that at this point in time that there were some visitation issues between the child and his non-custodial father. (Tr. 64:19-23). Thereafter, the child became resistant to coming to school. (Tr. 65:2-3). In fact he missed at least one day a week and was tardy on other days. (Tr. 222:20-23). The school system consulted James Fox, Ph.D., a professor of psychology with

East Tennessee State University who was working with a program in which consultative services were provided to schools and families where the issue was the behavior of the child. Dr. Fox's vita was stipulated and he subsequently testified to having a variety of experiences in dealing with autistic children. (Tr. 244-249). Dr. Belcher asked Dr. Fox to consult with Dr. Mozingo during this period for the purpose of communicating about the child's condition, which he did. (Tr. 207:18-24). During this period, the mother discussed the Lovoss program with the school staff and as a result the school purchased a set of six tapes concerning the Lovoss system for viewing by the staff. (Tr. 208:4-15).

At the IEP meting in March of 1998, the mother then proposed an in-home educational program (Tr. 73: 18-25, p.74), (Ex. 42) which was to be administered by Dr. Dennis Mozingo. He was to provide a couple of days of initial training to the parent and to college students who would be working with the child. (Tr. 76:1-10). The proposed program was based on Applied Behavioral Analysis which uses a "discreet trial" approach. (Tr. 78, 79, 80, 81). This intense program was to occur in the home for four to five months and then allow the child to be mainstreamed into the school. (Tr. 78 & 79). The individuals who were to provide the training were to be "students who were interested, patient, and compassionate, but not necessarily educated in dealing with or educating an autistic child." (Tr. 88:5-25, 89:1-10). The school system did not agree with this approach saying that they were already using a behavioral analyst, Dr. Fox, and that they were already doing approaches recommended by Dr. Mozingo. (Tr. 182:14-25, 183:1-7). The mother admitted essentially telling the IEP team members in the March, 1998, IEP meeting as well

as the August, 1998, meeting "that all this meeting is a bunch of blankety - blank and the only question is are you going to implement my program or not." (Tr. August, 48:17-25, 49:1-2). The mother unilaterally removed the child from school on or around May 13, 1998, in order for him to participate in this home-based program (Tr. August, 42:5-15) where he remained until August of 1998.

Dr. Fox had talked with the mother in May of 1997, to see if she wanted a functional assessment of the child. The mother failed to contact either him or his staff for this assessment. (Tr. 276:7-14). However, Dr. Belcher did contact him, either right before or right after the Christmas Holidays, to perform a functional assessment. (Tr. 276:18-25). Although there was a waiting list, because of the specific request, Dr. Fox proceeded to perform the functional behavioral assessment. (Tr. 277). Dr. Fox subsequently saw the child approximately six times formally, interviewed staff, read records and talked with the mother. (Tr. 250: 3-12). On the day before the hearing, April 20, 1998, Dr. Fox provided a report to the Washington County School System concerning this assessment.

The child made significant progress in the first grade despite his behavioral difficulties. During the latter part of the first grade (spring of 1998), the child could dress himself, fix his own cereal for breakfast, fix his own lunch, read on the first grade level, read signs and logos well, had a reduction in echolalia, and had reduced the prevalence of autism characteristics and had made real improvement as far as compliance in school, transition from school to home and from home to school. (Tr. 68:8-25, 69:19-25, 70:1-4, 71:10-25). Overall, the child was doing excellent according to the mother. (Tr. 178:21-25,

179:1). The child's mother reports the child read comfortably on the first grade level when he was in first grade. (Tr. 70:3-4). Although she had some questions about the child's reading comprehension (Tr. 71:1-9), Dr. Allen, the Petitioner's expert, reported that the child's reading comprehension was in the average range. (Ex. 38, p. 153). In spite of all this, the mother removed the child from school in May of 1998 to participate in the home-based program.

The child's first grade teacher, Sue Stafford, stated that the child had received a combination of one-on-one teaching (provided through the teaching assistant) and regular teaching in a group setting within a regular classroom. (Tr. 217). She stated that under this program the child was one of the best readers in the class, (Tr. 218:12-21), math was stronger than reading, (Tr. 218:22-25, 219:1-4), that socially the child was relating to other children, (Tr. 220:14-25), was socially well adjusted for a first grader, (Tr. 221:1-8), and that on a typical day it would be hard to identify this child as an autistic child in the classroom. (Tr. 227: 4-9). Further, the teacher noted that at the time the child was having problems around Thanksgiving, he missed school at least once a week and was tardy on some of the other days of the week. (Tr. 222:9-25). The mother was transporting the child to the school at this time. Mrs. Stafford stated that once the child started riding the bus it benefitted [redacted] and that the problematic behavior had almost disappeared (as of her testimony in April, 1998). (Tr. 223:19-25, 224:21-22).

It is interesting to note that all but one of the professionals who testified in this case recommended a school-based, not a home-based, program for this child. Elizabeth Dotson,

a certified speech and language pathologist, called by the Petitioner, stated she felt the program should be done at school (Tr. 103:10-19, 120:12-16) and that it was critical that autistic children have contact with normal peers (Tr. 107:9-14). Further she stated there were other methods that might work with this child other than the one proposed by the mother (Tr. 119:1-22). Dr. William Allen, a psychologist, a stipulated expert in the field of autistic children and an expert called by the Petitioner, stated that it would be difficult to meet this child's needs if he were not in school (Tr. 137:21-23). He felt the ideal setting was a school setting where the child could receive one on one instruction and an opportunity to participate in a regular classroom (Tr. 142:10-14). Further, he felt there was a risk of regression if the child were placed in a strictly home based program (Tr. 143:17-25, 144:1-5).

Additionally, Dr. Allen, the Petitioner's own expert, did not even recommend the Petitioner's requested program. He felt there was nothing magical about the specific technique of using "discreet trials" as asked for by the mother. He stated they are simply using "very careful teaching techniques." (Tr. 125:1-19). Nor did Dr. Allen agree with the recommendation of a 35-40 hour program. In fact, he stated that research had shown the Applied Behavioral Analysis Program could be more effective if taught every other day. (Tr. 126:1-18). He felt the main need of this child was for carefully controlled instruction. (Tr. 129:13-20). Additionally, Dr. Allen stated that there are people in Tennessee who could do this type of training and that there is nothing magical about Dr. Mozingo's program. (Tr. 149:4-25, 150:1-14).

Dr. Fox, the school systems consultant stated, after performing a functional assessment on this child, that to change him to a more restricted placement would be contra-indicated. (Tr. 267:2-25). Additionally, that if this child was removed from school he would have a problem of reintegration (Tr. 268:12-23). Further, Dr. Fox had told the mother of his concerns about a home based program for this child (Tr. 303 & 304:1-9). With regard to the type of program, Dr. Fox testified he recommended data-based collection just as did Dr. Mozingo (Tr. 300:6-21) and that what he and Dr. Mozingo would provide for this child would be very similar (Tr. 282:1-3) but that he recommended a school-based program.

In the testimony of Dr. Brian Bonfardine, a psychiatrist, given via deposition, he stated he felt Dr. Mozingo's program was the only program he had seen drawn up that would provide relief for this child (Depo Dr. Bonfardine 22:6-20). However, he did not rule out that someone with similar credentials could not offer a program for this child (Depo: 23). Further, Dr. Bonfardine had not discussed this child's placement with Dr. Mozingo (Depo: 34), he was not aware that this child's behavior had dramatically improved at the time he gave his deposition (Depo 20: 6-7), he had only seen the child once (in March, 1998) (Depo 19:7-12), nor had he ever observed the child at school (Depo 18:7-10). Further, in his report he made specific reference to the need for behavior modification at home and at school. (Ex. D to the Petitioner's post hearing brief.)

Mr. Lynn Musick, the teaching assistant for the latter part of the first grade and the current assistant in the second grade, testified that this child is "great for an inclusion

classroom" and if this child is not in the classroom with his peers to continue to develop his social skills, this would be "a disservice" to him. (Tr. August 170:4-8).

Dr. Martha Coutinho, professor in special education at East Tennessee State University called by the Respondent, testified she had talked with the teaching assistant, Lynn Musick, observed the child at school, talked with the child's mother, reviewed the records, attended the IEP meeting on August 10, 1998, visited the child's home three times, while at the home observed the in-home aide working with the child during the summer of 1998, reviewed data sheets collected during the home program, and conferred with various school personnel working with the child. (Tr. August 182, 183, 184). Based on those activities and her education and experience, she felt the child was succeeding in school, interacting with his peers and teacher and was learning. (Tr. August 185:7-25, 186:1-20, 187:10-15). He was at a higher grade level in math than most of the other children and doing well in reading. (Tr. August 187:15-18) Dr. Coutinho observed the teaching assistant, Lynn Musick, using applied behavioral analysis techniques to teach this child. (Tr. August 188:15-25, 189:1-18). She felt the advantage to the inclusion program vs. the home program was that the child had to bridge the knowledge he learned over into application into the real world. (Tr. August 189:18-23). Conversely, when Dr. Coutinho observed the child in the home she noticed that the tasks the child was being asked to perform were ones he had previously mastered in first grade. The curriculum applied in the home looked simpler by many steps than what the grade level the child was in would require. (Tr. August 191:9-25, 192:1-7). Dr. Coutinho testified the home program was not the least restrictive environment

for this child and would not prepare him to acquire the skills he needed to interact in the world. (Tr. August 194:6-25, 195:1-13). Further she disagrees that the child's program should primarily consist of "discreet trials" as he has shown that he can learn in much the same way as his peers. (Tr. 203:6-23). "Discreet trials" could be one of many teaching methods used with this child, but should not be the only method. (Tr. 203:24-25, 204:1-6). Additionally, the first grade teacher, Sue Stafford, testified that she observed Lynn Musick, the child's teaching assistant, using the same techniques as those demonstrated on the "discreet trial" tapes she had previously viewed. (Tr. 217:22-25, 218:1-11).

The child, by all accounts, had received educational benefit and had greatly improved by the spring of 1998. Yet even though the child had improved and a Due Process Hearing held (but before an order had been issued due to Petitioner's request to introduce new evidence) the mother unilaterally removed the child from school in the middle of May to begin the home-based program instituted by Dr. Mozingo. (Tr. August 42:2-15). Following the August hearing the mother was ordered to return the child to school for the start of the new school year (August 24, 1998) and that the child was to remain in school. Nevertheless, the mother removed the child in anger following an outburst of expletive ridden and threatening remarks she made against various school personnel and school agents. This was an admission made by the mother's advocate in a telephonic conference call between the advocate, counsel for the school system and the Administrative Law Judge (see Interim Order entered in August 1998). No professional saw this child prior to his removal from school. The threats were considered serious enough that an order was issued demanding the

child be returned to school and that the matter involving the threats be referred to a local court.

ISSUES AND RESPONSE

I. WHAT IS THE APPROPRIATE EDUCATIONAL PLACEMENT WHICH IS REASONABLY CALCULATED TO PROVIDE THE CHILD WITH A FREE APPROPRIATE PUBLIC EDUCATION IN THE LEAST RESTRICTIVE ENVIRONMENT?

Board of Education v. Rowley, 458 U.S. 176, 102 S.Ct. 3034 (1982) is the controlling legal authority delineating the standard of services which the school system must provide to disabled students. Rowley held that a program is appropriate if it "is reasonably calculated to offer some educational benefit to the disabled child." There is no question in this case that this child received educational benefit in the school based program provided by Washington County. He exhibited advanced reading and math skills and had also made strides in his socialization skills. He had developed relationships with the children in his class which is necessary for an autistic child. Further, there was no proof offered that this child wasn't receiving educational benefit from Washington County School. In fact, the school had taken many of the suggestions of the parent and included them into the IEP for

the child. The real issue was whether the child was going to be involved in a home based program as mandated by the mother.

IDEA allows the removal of a child from a regular school environment when a child cannot be educated in a regular classroom. The law provides: "To the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are not disabled, and special classes, separate schooling, and other removal of children with disabilities from the regular educational environment occurs only when the nature or severity of the disability of a child is such that education in regular classes with the use of supplementary aides and services cannot be achieved satisfactorily." 20 U.S.C. § 1412 (a)(5)(A), Tenn Code Ann. § 49-10-103.

Based on the evidence produced in this case, including evidence presented by the Petitioners, it is obvious that the least restrictive environment for this child is a school-based, not a home-based, program. Frankly, it was confusing to this court that the advocate for this parent put in proof that was contrary to the Petitioner's position, as the only two professional witnesses who testified live for the Petitioner (Dr. Allen and Elizabeth Dotson) stated the child needed a school based program. Further, as previously mentioned, Dr. Allen did not even recommend the program requested by the Petitioner. 34 CFR § 300.508 establishes the right of any party to a hearing to be accompanied and advised by counsel and by an individual with specific knowledge or training with respect to the problems of children with disabilities. In this case the parent was advised by a paralegal, not an individual who had

specific knowledge or training with respect to children with disabilities.

Initially this parent had requested that a home-based program be offered to her son as she felt that the school-based program was insufficient for his needs. A document from Dr. Mozingo introduced into evidence clearly designated a home-based program (Ex. 42). Further, testimony offered by another parent, Shanna Arnold, who had used this particular program for her preschool-aged child indicated Dr. Mozingo's program had to be a home-based program. (Tr. 162:2-4). However, in the hearings the Petitioner stated she simply wanted the program to be taught and had no objections to it occurring in the school. (Tr August. 25:10-14). This stance was contrary to the weight of the evidence and contrary to the position the parent actually took. The least restrictive environment for this child was clearly a school-based program.

The school system is required to provide an education which gives a basic floor of opportunity, not one that seeks to maximize the student's education. Doe v. Board of Education of Tullahoma City Schools, 9F.3rd 455, 20 IDELR 6171, 6th Cir. 1993). In the case at hand the school system seems to have provided more than a floor of opportunity for this child. The court In Re Conklin, 946 F. 2d 306 (4th Cir. 1991) stated that passing grades and promotion are not a litmus test for FAPE (946 F.2d at 316). However, testimony offered by both parties indicated that this child had progressed academically and socially. Further, the child had improved behaviorally. Therefore, passing grades and promotions were not all that was involved in this matter.

II. CAN A PARENT FORCE THE SCHOOL TO USE A SPECIFIC METHODOLOGY AND A SPECIFIC PERSON TO IMPLEMENT THE METHODOLOGY UNDER IDEA?

This parent had previously made many requests of the school system concerning the education of her son i.e., taking the child from a planned CDC class to a regular classroom, having a specific teacher, having the staff trained in the TEACCH program, having the staff become educated in the Lovoss program, and acquiring a male teaching assistant. The school complied with these requests with no noted problems. However in 1998, the parent insisted on using a specific methodology as well as a specific person to implement the methodology for her son. The school system denied the mother's proposal saying they already had a program that was working for the child. Shortly after this denial to implement a specific methodology in the child's home, the mother arbitrarily and unilaterally removed the child from school in May of 1998 prior to the end of the school year. She arranged for a new college graduate, Julie Coffin, with no background in education nor any specific prior training in autism (save for courses required for a psychology degree) to implement the program in her home under the initial direction of Dr. Mozingo. While there seemed to be no question that Ms. Coffin was bright, she had fewer credentials to work with this autistic child than the personnel the school system was already providing. Further, even though this parent had initially insisted on using Dr. Mozingo's program, by the time the second hearing

had occurred on August 21, 1998, she had already hired yet another consultant in place of Dr. Mozingo. (Tr. August 49:3-16).

The courts have been quite clear that a parent or student may not chose a specific methodology for the child's education. Rowley, *ibid.* See also, Tenn. Code Ann. § 49-2-210 (Supp. 1993). Even if the request for specific methodology could be accommodated the overwhelming weight of the evidence in this case would negate the institution of Dr. Mozingo's program. Further, at this juncture the mother has a new consultant. This new consultant is the Center for Autism and Related Disorders based in Encino, California. (Tr. August 45:10-16). Further, this program has its own curriculum that varied in some ways from Dr. Mozingo's and actually had some real technical differences. (Tr. 45:17-25, 46:1-5).

III. IS THE PARENT ENTITLED TO REIMBURSEMENT FOR DR. MOZINGO'S PROGRAM?

The mother is not entitled to reimbursement for Dr. Mozingo's program for two reasons. First, the mother did not ask for reimbursement until the post hearing brief. There was no mention of reimbursement upon filing for the Due Process Hearing, nor in the initial contact with the Petitioner to define the issues. Further, in neither hearing was a request made. In the August hearing the advocate admitted that there had been no request for reimbursement. (Tr. August, 31:11-18).

Second, the mother violated the "stay put" provision of IDEA when she arbitrarily and unilaterally removed the child from school in May of 1998, to enroll the child in Dr. Mozingo's home-based program. The mother requested the Due Process Hearing in March of 1998 and a pre-hearing telephone conference call was held on March 31, 1998. A Due Process Hearing was held on April 21, 1998, whereby the issue of the in-home program was discussed. The training for Dr. Mozingo's program was on or around May 12, 1998, at the same time the child was removed from school. The post-hearing brief for the Petitioner was dated May 21, 1998. It was evident from the timing of the events that this parent had no intention of keeping the child in school pending the outcome of the hearing. Further, it was the parent who initially prolonged the process by asking to admit new evidence thereby necessitating a second hearing in August of 1998.

IV. WAS THE CHILD ENTITLED TO ONE-ON-ONE SPEECH THERAPY PURSUANT TO THE REQUEST FOR A DUE PROCESS HEARING?

The child is not entitled to one-on-one speech therapy pursuant to the request for a Due Process Hearing because this was not an issue properly presented by the Petitioner. While it may be entirely appropriate for the child to have specified one-on-one speech therapy this is an issue that should be specifically addressed in an IEP meeting - taking all opinions into account. Should it be determined by the M-Team that the child should have

one-on-one speech therapy then the school system shall provide it as a related service as mandated by IDEA.

It is therefore **ORDERED ADJUDGED AND DECREED:**

1. That the child is to remain in the Washington County School System in a school-based placement.

2. That an IEP meeting is to be held to discuss and formulate an IEP which will specifically address the behavioral goals for this child. This meeting is to be held within two weeks of the issuance of this order.

3. That any behavioral consultants secured by the school system or the parents are to be included in this IEP meeting.

4. That the mother shall attend this IEP meeting for the entire meeting.

5. That the mother shall not make any threatening remarks or remarks which would be considered offensive to a reasonable person in her dealings with any school personnel or agent of any school personnel.

6. That in the IEP meeting scheduled within two weeks of this order the issue of one-on-one speech therapy shall be addressed.

7. The school system is the prevailing party in this matter.

8. The parent is not entitled to any reimbursement.

ENTERED this 21 day of October, 1998.

Linda G. Welch
Administrative Law Judge

CERTIFICATE OF SERVICE

This is to certify that I, Linda G. Welch, the undersigned, served a true and exact copy of this legal pleading to Mr. William Keith Martin, 526 Lee Circle, Johnson City, TN 37604 and E. Pat Hull, attorney for Washington County School System, at P. O. Box 1388, Kingsport, TN 37662, by deposit in the United States mail, postage prepaid and correct address thereon to carry the same to its destination.

This is the 21 day of October, 1998.

Linda G. Welch
Administrative Law Judge